

Before the
Federal Communications Commission
Washington, DC

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In the Matter of

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Toll Free Service Access Code

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CC Docket No. 95-155

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To: The Commission

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REPLY COMMENTS OF VANITY INTERNATIONAL

Loren C. Stocker, Managing Partner of Vanity International, hereby submits reply comments in conjunction with the Notice of Proposed Rule Making released in this proceeding on October 5, 1995 and submitted November 1, 1995. With respect thereto, the following is stated:

"Public Resource" is a legal fiction

The idea that an assigned 800 number is a public resource fails any rational test. Under this legal fiction the numeric for *1-800-Flowers* would return to public domain and the corporation, *1-800-Flowers*, would lose all proprietary interest in the phone number that represents \$200 million a year-- business *they've* built by spending millions in advertisement. This is rational?

It seems more appropriate to think of the phone system as a public resource along with any yet-to-be assigned numbers (like public land prior to homesteading). Once in-use, however, 800 numbers should be explicitly recognized as business assets. All working numbers represent the users vested, proprietary interests in trademark, advertising, and goodwill-- not matter how seemingly insignificant. Further, with recognition of ownership rights the next entrepreneur seeking capital for a venture like *1-800-Flowers* will be more likely to be funded. Ownership rights are good for the users, and good for "the industry."

Anti-Brokerage Language

We feel that the FCC should not allow the carriers to in any way interfere with acquiring 800 numbers from existing customers-- for a fee, if necessary. Most everyone reading this is aware that *1-800-Collect* (MCI Corporation), *800-Check-In* (Hyatt), *800-The-Most* (Sprint), and *800-Shuttle* (United Airlines) were sought and secured from existing users by these well-known, honorable corporations. I can not imagine any rationale that would permit the FCC -- or the carriers -- to interfere with these legitimate transactions. The concern for "broker" activities is far overblown and should in no way preempt the rights of legitimate businesses to make acquisitions.

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Transfer of Ownership

The FCC should not allow "the industry" to make any rule that interferes with the rights of businesses to freely exchange, release, or transfer ownership of 800 numbers. Period. Anything short of this would give "the industry" an unconscionable license to interfere with the business plans of their subscribers.

Substantial Usage

It has been a long standing policy of the courts to not determine adequacy of compensation. Allowing the carriers to set guidelines or determine "substantial use" would, in effect, suggest that they could interfere with small businesses in a way that no court would uphold. For example, the phone bill mentioned in *Bass Tickets (Comments on CC Docket No. 95-155, point #4)* of \$7 monthly in no way constitutes evidence of non-legitimate use, or absence of bona fide intent-to-use. It would come as no surprise if *1-800-Flowers* had a similar bills during their first months of operation and planning. In general, phone numbers don't ring until advertised. Planning takes time.

If the courts refuse to determine adequacy of compensation, how can "the industry" be allowed a free hand to determine "substantial use?" Seizing numbers from small users simply because they fail to reach some threshold of "substantial use" would be nothing short of tortious interference. Further, any requirement for monthly fees, deposits, or minimum usage charges would result in windfall profits to the carriers and would handicap small business professionals.

Due Process

It would be unconscionable to give carriers any right to seize 800 numbers without due process of law.

Vanity Numbers

I agree with the comments that vanity numbers represent only about 25%, or so, of all 800 numbers. Therefore, if we assume about half of these users will replicate then 10- 12% of the 888 exchange will be consumed, or 760,000 to 912,000 numbers.

Of our most recent 1,941 vanity creations, we confirmed that 303 were in-use as vanity numbers; or about 15.6%. It is reasonable to assume that about half as many more were in-use, but unconfirmable. With this, we have something like 23.4% of those numbers with good potential (i.e. they spell something appropriate) being used as vanity numbers. Keep in mind, though, that about 1/4 of all numerics spell nothing at all (most because of a poorly placed "0" or "1" and the rest with no vowels). Using this model, less than 20% (around 17.5%) of all 800 numbers are working as vanity numbers, or 1.3 million or so.

It is essential to recognize that vanity numbers are always created by end uses, not "the industry." Users don't subscribe to vanity numbers but, rather, numeric phone numbers. It would, therefore, be unfair for the carriers to benefit in any way from the efforts of their subscribers via special vanity number fees and such, as suggested by some.

Vanity Number Replication

Right of first refusal is essential! Even if trademark protection were sufficient -- and that's questionable -- why force as many as 1.3 million users into court to protect their goodwill from free-riders and speculators? Replication will allow countless companies to avoid court battles. Beyond the initial offering of 888 numbers, simply open it up on a first-come basis and let market forces prevail.

With regard to fees, anything over \$5 would be inappropriate and burdensome to small business.

Anti-Warehousing

Forcing deposits or charging substantial fees will only serve to disadvantage small carrier and small businesses. Rather, the notion of releasing all the planned exchanges (877, 866 etc.) makes far more sense; **crisis solved.** There's no need to stockpile what's in abundance. Of course, beyond 888 the balance of the exchanges have little mnemonic value and, in my view, have little value to business users.

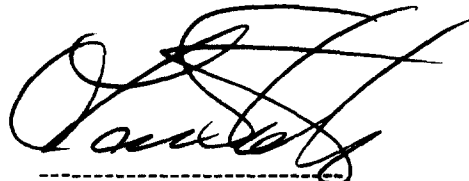
If ownership rights prevail, market forces will drive less important users down to the least desirable exchanges. For example, a business who desires an 800 number can persuade a residence, pager, or cellular phone user to give their 800 number and go with a functionally equivalent 866 number. Free exchange of numbers is clearly essential for market forces to work.

WHEREFORE, it is respectfully requested that these comments be considered in this proceeding.

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Respectfully Submitted



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